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No. 02-1267

(4)

IN THE

Supreme Court of the United States

CHARTER COMMUNICATIONS, INC.,
CHARTER COMMUNICATIONS PROPERTIES, LLC.,
AND PAUL G. ALLEN,

PETITIONERS,

v.

COUNTY OF SANTA CRUZ CALIFORNIA,

RESPONDENT.

On Petition For a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

Motion of National Cable & Telecommunications Association, California Cable & Telecommunications Association, and American Cable Association For Leave to File Brief As *Amici Curiae* and Brief In Support of Petitioners

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MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Rule 37(b) of the Court's Rules, the National Cable & Telecommunications Association ("NCTA"), the California Cable & Telecommunications Association ("CCTA"), and the American Cable Association ("ACA") request leave to file the accompanying *amicus curiae* brief in support of the petition for a writ of certiorari in this case. The petitioners have consented to the filing of the brief, but the respondent County of Santa Cruz has refused to consent.

The National Cable & Telecommunications Association ("NCTA") is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation's cable television subscribers, as well as more than 200 cable programming networks. NCTA's members also include suppliers of equipment and services to the cable industry.

The California Cable & Telecommunications Association ("CCTA") represents the cable television industry in the State of California. The American Cable Association ("ACA") is a national trade association whose interests focus on smaller cable operators. ACA's members serve customers primarily in small communities and rural areas across the United States.

The decision of the Ninth Circuit, if left in place, will affect cable operators (and their customers) throughout the nation. Most of the more than 11,000 franchise agreements that exist between cable operators and local governments include provisions requiring the operator to obtain the local government's consent to a transfer of ownership of a franchised cable system. The deferential standard adopted by the Ninth Circuit will allow and encourage local franchising authorities to use the transfer process to insist on fees and concessions from cable operators that are barred by Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521, *et seq.*, and by the First Amendment.

As a result of trends toward consolidation and regional clustering of cable systems, transfers of ownership of cable companies and individual cable systems often occur. The temptation for local franchising authorities to ask for monetary and regulatory concessions in return for their approval is substantial. But excessive fees and regulatory obligations increase the cost of cable service, inhibit the ability of cable systems to develop and provide services in the manner that best meets consumer demand, and unfairly hamper the ability of cable operators to compete with direct broadcast satellite providers and other competitors. These are major reasons why Congress adopted the provisions of Title VI in the first place, and why such requirements directly affect First Amendment rights.

NCTA, CCTA and ACA, on behalf of their members, have an interest in ensuring that the protections of Title VI and the First Amendment remain fully enforceable and that local franchising authorities not be encouraged and enabled by the Ninth Circuit's decision to ignore those protections with impunity. For these reasons, NCTA, CCTA and ACA respectfully request that their motion for leave to file an *amici curiae* brief be granted.

Respectfully submitted,

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INTEREST OF *AMICI*

The National Cable & Telecommunications Association ("NCTA") is the principal trade association representing the cable television industry in the United States.[1] Its members include cable operators serving more than 90% of the nation's cable television subscribers, as well as more than 200 cable programming networks. NCTA's members also include suppliers of equipment and services to the cable industry.

The California Cable & Telecommunications Association ("CCTA") represents the cable television industry in the State of California. The American Cable Association

[1] No counsel for a party authored this brief in whole or in part, and no person or entity, other than the *amici curiae*, made a monetary contribution to the preparation or submission of the brief.

("ACA") is a national trade association whose interests focus on smaller cable operators. ACA's members serve customers primarily in small communities and rural areas across the United States.

The decision of the Ninth Circuit, if left in place, will affect cable operators (and their customers) throughout the nation. Most of the more than 11,000 franchise agreements that exist between cable operators and local governments include provisions requiring the operator to obtain the local government's consent to a transfer of ownership of a franchised cable system. The deferential standard adopted by the Ninth Circuit will allow and encourage local franchising authorities to use the transfer process to exist on fees and concessions from cable operators that are barred by Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521, *et seq.*, and by the First Amendment.

As a result of trends toward consolidation and regional clustering of cable systems, transfers of ownership of cable companies and individual cable systems often occur. The temptation for local franchising authorities to ask for monetary and regulatory concessions in return for their approval is substantial. But excessive fees and regulatory obligations increase the cost of cable service, inhibit the ability of cable systems to develop and provide services in the manner that best meets consumer demand, and unfairly hamper the ability of cable operators to compete with direct broadcast satellite providers and other competitors. These are major reasons why Congress adopted the provisions of Title VI in the first place, and why such requirements directly affect First Amendment rights.

NCTA, CCTA and ACA, on behalf of their members, have an interest in ensuring that the protections of Title VI and the First Amendment remain fully enforceable and that local franchising authorities not be encouraged and enabled by the Ninth Circuit's decision to ignore those protections with impunity.

SUMMARY OF ARGUMENT

Congress has comprehensively defined and limited the permissible roles of state and local governments and the Federal Communications Commission in regulating cable systems and cable operators. And, as this Court has made clear, the regulation of cable systems is also constrained by the First Amendment. But under the Ninth Circuit's decision in this case, all those statutory and Constitutional constraints on local governments disappear when a cable operator seeks to transfer a cable system. This Court should grant the petition for certiorari in order to make clear to the more than 11,000 franchising authorities in the nation that this is not the case.

The decision effectively gives local franchising authorities carte blanche to insist, in return for consenting to a transfer of ownership, on cash contributions and other requirements expressly forbidden under Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521, *et seq.*, ("Communications Act") or by the First Amendment. This is because, instead of requiring *heightened* scrutiny to determine whether the local government's real reason for denying a transfer was valid and legitimate, the Ninth Circuit held that courts must give overwhelming *deference* to the local government's "legislative" determinations.

The district court determined that the County of Santa Cruz had unreasonably and unlawfully conditioned approval of a transfer of ownership of a cable system on concessions from the cable operator that could not lawfully be required under Title VI or the First Amendment. But the Ninth Circuit held that as long as a local government can manufacture a "fairly debatable" basis for denying a transfer of ownership, App. at 7a, courts are precluded from determining the extent to which the government has, in fact, denied the transfer for illegitimate reasons.

There is no basis for such broad "legislative deference." First of all, the County was not engaged in legislative

decisionmaking. Its right to approve transfers of ownership was set forth in the terms of its franchise *agreement* with the cable operator, which also provided that it could not "unreasonably" withhold approval. In determining whether or not to consent to a transfer of ownership, the local government was not making the sort of unilateral legislative decision to which broad deference is sometimes due. It was fulfilling its contractual obligations under the franchise agreement.

In any event, even when local governments make unilateral determinations regarding cable operators that directly affect the right of a particular person to provide cable service to a community, they are not entitled to the broad deference afforded by the Ninth Circuit's decision. Because franchising authorities' determinations are constrained by comprehensive federal legislation and by the First Amendment, courts must be empowered to scrutinize – not simply defer to – their stated reasons.

This Court recognized in *City of Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488 (1986), that when a local government decides to deny a cable franchise, the impact of such a decision on protected speech requires careful scrutiny of the underlying facts. The Ninth Circuit's standard of broad legislative deference is wholly at odds with that approach.

Furthermore, the Federal Communications Commission specifically recognized that cities would be tempted to use the transfer approval process to extort all sorts of concessions that they could not otherwise impose on cable operators. And it made clear that such efforts to circumvent the constraints of Title VI are impermissible. The Ninth Circuit's standard allows local governments to violate that federal edict with impunity so long as they can generate any plausible pretext for denying approval.

Finally, the Ninth Circuit took the First Amendment out of play altogether by holding that when a cable operator

grants a local government the right to approve transfers of ownership, it waives any First Amendment rights that it may have had with respect to such approval. This holding is flatly at odds with this Court's presumption against the waiver of Constitutional rights. This Court requires a clear showing of an intent to relinquish or abandon such rights. Especially where, as in this case, the franchise agreement precludes the local government from "unreasonably" denying consent to a transfer, the Ninth Circuit had no basis for simply assuming that the cable operator meant to remove all First Amendment constraints during the transfer approval process.

ARGUMENT

I. THE "LEGISLATIVE DEFERENCE" STANDARD APPLIED BY THE NINTH CIRCUIT UNDERMINES IMPORTANT FEDERAL POLICIES EMBODIED IN THE COMMUNICATIONS ACT AND THE FCC'S RULES.

The core issue in this case is the standard for determining, on judicial review, whether a local government has unreasonably refused to consent to a transfer of ownership of a cable television system. The Ninth Circuit applied a highly deferential standard of review, treating the government's action as a "legislative" action, which must be deemed reasonable as long as any one reason for the decision is at least "fairly debatable." App. at 7a.

This standard – which the court called "much more forgiving" than the standard applied by the district court, App. at 5a. – would substantially undermine the comprehensive federal statutory framework adopted by Congress for the regulation of cable television. That framework, first enacted in 1984 as Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 *et seq.*, preserves a role for local governments in regulating the provision of cable service by cable systems that use public rights-of-way. But the role is carefully and narrowly defined and circumscribed.

Before Title VI was enacted in 1984, local governments had routinely demanded a variety of concessions from cable operators in return for the right to use public rights-of-way.[2] Some of these concessions were related to the provision of cable service. For example, cities demanded the right to regulate the rates charged for cable service, to dictate the types of equipment and facilities to be deployed, and to approve the particular programming services to be offered by the cable system. Other concessions had nothing to do with the provision of cable service and were simply a form of payment or tribute to the local government. Cities routinely required cable operators to pay a "franchise fee," and, in addition, often required operators to provide municipal parks, swimming pools or other in-kind benefits.

In all these areas (and others), the enactment of Title VI's provisions limited what cities may require. Cities may only regulate the rates of systems that are not subject to "effective competition," and they may only regulate rates for the basic tier of service provided to all subscribers. 47 U.S.C. § 543. They may not insist on the provision of particular programming but may enforce agreements by an operator to provide certain "broad categories" of programming. *Id.*, § 544. They may require cable operators to pay a franchise fee, but the fee is strictly limited to five percent of an operator's gross revenues from the provision of cable service – and it

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[2] *See* S. Rep. No. 98-67, 98th Cong., 1st Sess. 6 (1983) ("Unlike previous licenses which were based upon the police power, many modern cable franchises touch virtually every aspect of a cable system's operation. The premise for the exercise of this expanded local jurisdiction over cable systems continues to be its use of local streets and rights of way. In the past, local regulation bore a reasonable relationship to that use. With the introduction of cable into larger markets and the expansion of services provided over cable, the degree and detail of local regulation has increased and there is no longer a reasonable relationship between local regulation and cable systems' use of streets and rights of way. S. 66 seeks to restore the jurisdictional boundaries over cable to their more traditional positions.").

includes any assessments, including in-kind contributions, that are uniquely imposed on cable operators and are not fees or assessments of general applicability. *Id.*, § 542.

Cities may include in their franchise agreements with cable operators a requirement that the operator obtain consent from the city for any transfer of ownership or control of its cable system. As the Federal Communications Commission has noted, cities might well be tempted to use this authority over transfers of control to extract from cable operators concessions and payments that exceed what they are otherwise permitted by Title VI to require. Therefore, while noting that the statute "does not require the Commission to adopt substantive standards governing the approval of transfers," it made clear that

> in exercising their transfer jurisdiction, franchising authorities may not seek to circumvent the Commission's authority over rate regulation, franchise fees or other matters. For example, a franchising authority may not delay a transfer or impose conditions on a transfer authorization that would impinge upon the Commission's statutory authority.

Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 6828, 6834 n.38 (1993).

In the present case, the district court found that the County had attempted to impose conditions on the approval of a transfer of control that would have been at odds with the limitations and prohibitions of Title VI. For example, it asked that Charter pay a $500,000 "mitigation fee" for approval of the transfer, which, in combination with the franchise fees already assessed on Charter, would have violated the franchise fee limits of Title VI. It also sought a freeze on the rates charged to subscribers, which would have violated the rate regulation provisions of the statute. And it imposed upon Charter a request for information that the district court found

"so unreasonable in its scope" as to violate the FCC's rules limiting the material that may be requested in connection with the transfer approval process.

The Ninth Circuit did not dispute that the County had asked for all these concessions. Nor did it specifically disagree that if the County had denied the transfer because of Charter's refusal to accede to any of these unlawful conditions, the denial would have been unreasonable and impermissible. But the Ninth Court held that the district court was effectively precluded from determining whether this was, in fact, the case. It held that the district court could only examine the County's stated reasons for denying the franchise, and if any one of those reasons was not irrational on its face, the denial must be deemed reasonable.

Under this deferential standard, cities will be able to violate Title VI and the FCC's regulations with impunity. The Ninth Circuit's standard, in essence, removes all but the pretense of judicial review. No franchising authority would be foolish enough to state explicitly that it denied a franchise transfer application solely because the cable operator refused to agree to unlawful conditions. And no court would be empowered to scrutinize the franchising authority's stated reasons to determine whether they were mere pretexts and whether the franchising authority would, in fact, have approved the transfer if the cable operator had acceded to the unlawful conditions.

In these circumstances, franchising authorities will have no trouble coming up with such pretexts. They will have every incentive to use the transfer process to extract the fees and regulatory concessions that Congress enacted Title VI in order to prevent. And cable operators seeking to complete a transfer of ownership will have little choice but to accede to the cities' demands. The decision of the Ninth Circuit, if allowed to stand, will therefore undermine important policies and regulatory determinations that Congress put in place in order to balance the interests of local governments, cable operators and consumers.

II. THERE IS NO BASIS IN LAW OR PRECEDENT FOR APPLYING "LEGISLATIVE DEFERENCE" TO MUNICIPAL REVIEW OF TRANSFERS OF OWNERSHIP OF CABLE SYSTEMS.

The Ninth Circuit based its decision on the premises that the County's determination of whether or not to approve a transfer of ownership was a "legislative" determination, and that such legislative determinations are generally subject, as a matter of law, to broad and forgiving deference. Neither premise is correct.

Unlike its initial determination to grant a franchise to a cable operator, there was nothing even arguably "legislative" about the County's review of a transfer of ownership. What was at issue was not, as the Ninth Circuit suggested, "an application for government *privileges*." App. 6a, *citing Gifford v. City of Los Angeles*, 88 Cal.App.4th, 801, 806 (2001) (emphasis added). Nor was the County acting pursuant to "an agreement that contemplates future *discretionary* approvals." *Id.*, *citing Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors*, 84 Cal.App.4th 221, 227, 233 (2000) (emphasis added).

The County's authority to review transfers of ownership was based on the franchise agreement that it entered into with the cable operator. Under that agreement, the County could not "unreasonably" withhold its consent. Thus, in determining whether or not to consent to a transfer of control, the County was not legislating or acting with unfettered discretion. Nor was it considering whether to grant a "privilege." It was acting pursuant to – and was bound by – its contractual obligations under the franchise agreement.

In any event, even "legislative" determinations by local governments regarding the terms and conditions on which cable operators are permitted to provide service – and, in particular, determinations regarding who shall be allowed to operate a cable system – are not entitled to the broad

deference mandated by the Ninth Circuit. This Court held as much in *City of Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488 (1986). That case involved a city's determination not to grant a franchise to a prospective cable operator. The Court, recognizing that "the activities in which [the franchise applicant] allegedly seeks to engage plainly implicate First Amendment interests," refused to defer to the factual findings upon which the City had based its denial of the franchise:

> The City has adduced essentially factual arguments to justify the restrictions on cable franchising imposed by its ordinance, but the factual assertions of the City are disputed at least in part by respondent. We are unwilling to decide the legal questions posed by the parties without a more thoroughly developed record of proceedings in which the parties have an opportunity to prove those disputed factual assertions upon which they rely.

476 U.S. at 494.

The district court undertook precisely the type of factual inquiry suggested in *Preferred*. But the Ninth Circuit rejected the district court's approach and held that the permissive standard of legislative deference applies "even when First Amendment rights are implicated through secondary effects," J.A. 7a. In doing so, it relied on two recent decisions of this court. The holdings in those cases are wholly inapposite, and there is, in fact, no basis for such a standard.

City of Los Angeles v. Alameda Books, Inc., 122 S.Ct. 1728 (2002) was a zoning case, in which the city prohibited adult bookstores, arcades, and other adult-oriented establishments from locating within 1,000 feet of another such establishment, or within 500 feet of any religious institution. The ordinance was aimed at restricting criminal activity that the city found likely to accompany a concentration of adult stores and arcades. The Court held that the city's findings regarding the likelihood of such criminal

activity were entitled to substantial deference. *Id.* at 1736-37 (plurality opinion).

But, as Justice Kennedy made clear, the Court's analysis was limited to "time, place and manner" restrictions that are intended to suppress secondary effects that may accompany speech *without suppressing the speech itself.* *Id.* at 1742 (Kennedy, concurring) ("a city may not, regulate the secondary effects of speech by suppressing the speech itself"). In contrast, refusing to permit a transfer of ownership directly suppresses speech itself. Like the municipal decision at issue in *Preferred Communications*, *supra*, it completely prevents the proposed transferee from providing cable television service to the residents of the community. And, as was the case in *Preferred Communications*, the facts and findings asserted by a city to support such a refusal are not entitled to the legislative deference that might apply to the facts and findings asserted in support of a "time, place or manner" regulation that targets and suppresses only the secondary effects associated with speech.

Board of County Comm'rs v. Umbehr, 518 U.S. 668 (1996), was a case involving the speech rights of government employees and independent contractors working for the government. The Court held that in such cases, the government has an "interest in being free from intensive judicial supervision of its daily management functions," and that "[d]eference is therefore due to the government's reasonable assessments of its interests *as contractor.*" *Id.* at 678 (emphasis in original). But this deference is unique to cases in which the government acts in a managerial role, because, as the Court specifically pointed out, "[t]he government's interest in achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest when it acts as a sovereign to a significant one *when it acts as employer.*" *Id.* at 676 (*quoting Waters v. Churchill*, 511 U.S. 661, 675 (1994) (plurality opinion) (emphasis added)).

There is, in short, no support in this Court – and, indeed, the Ninth Circuit cited no support from any other federal court – for the Ninth Circuit's invention that a local government is entitled to substantial "legislative deference" in determining whether to authorize a transfer of ownership of a cable system. The government's authority to determine who may and who may not operate a cable television system is circumscribed by the First Amendment, which generally results in *heightened* scrutiny of the decisionmaking process. And, in this case, it is also narrowly circumscribed by the terms and policies of Title VI of the Communications Act, which limit the conditions that local governments may "reasonably" insist upon in return for approval of a transfer of ownership.

III. A CABLE OPERATOR DOES NOT WAIVE FIRST AMENDMENT RIGHTS WHEN IT AGREES TO ALLOW THE GOVERNMENT TO REVIEW – BUT NOT UNREASONABLY WITHHOLD CONSENT TO – TRANSFERS OF OWNERSHIP.

The Ninth Circuit swept aside the First Amendment implications of the County's refusal to consent to a transfer of ownership, instead holding that a cable operator waived its First Amendment rights when it "voluntarily entered into an agreement under which the County had to approve any transfer of the franchise." J.A. 11a. Under the standards set forth by this Court for determining whether a party has waived its Constitutional rights, no such waiver could conceivably have occurred.

As this Court has held,

> The question of a waiver of a federally guaranteed constitutional right is, of course, a federal question controlled by federal law. There is a presumption against the waiver of constitutional rights, . . . and for a waiver to be effective it must be clearly established that there was 'an intentional

> relinquishment or abandonment of a known right or privilege.'

Brookhart v. Janis, 384 U.S. 1, 4 (1966), *citing Glasser v. United States*, 315 U.S. 60, 70-71 (1942), *and quoting Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

The Ninth Circuit stood this holding on its head. In the absence of language in the franchise agreement clearly establishing that the cable operator had *not* intended to relinquish or abandon its First Amendment rights, it presumed that the operator *had* waived those rights. Even if the language of the franchise agreement had given the County the unqualified right to approve transfers of ownership, it would have been wrong to presume a waiver without any other evidence of the cable operator's intent. But in this case – as in virtually all cable franchises – the right to approve transfers of ownership was *not* unqualified. The franchise agreement specifically provided that the County could not "unreasonably withhold" its consent to a transfer.

It would be fair to construe this language, even in the absence of a presumption against waivers of Constitutional rights, as precluding the County from refusing to consent to a transfer because the cable operator refused to agree to conditions that would violate its First Amendment rights. If using the franchise transfer process to extort concessions that would otherwise be barred by the First Amendment or by the Communications Act is not "unreasonable," it is hard to imagine what is.

But this Court has held that there *is* a presumption against waivers. It flies in the face of that doctrine to hold that an agreement that prohibits the local franchising authority from unreasonably withholding consent to a transfer of ownership constitutes a blanket waiver of the cable operator's First Amendment rights. (And, in any event, it cannot conceivably be the case that the proposed *transferee* – the person who, after all, is being prevented from operating a cable system by the franchising authority's denial of consent –

somehow waived *its* rights when the incumbent cable operator entered into a franchise agreement.)

Not every restriction and condition imposed on a cable operator impermissibly infringes First Amendment rights. But this Court has repeatedly held that cable operators engage in speech that is protected by the First Amendment and that regulation of such speech must be subjected to the various levels of heightened scrutiny that apply to content-based or content-neutral regulation. *See Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 636 (1994); *Leathers v. Medlock*, 499 U.S. 439, 444 (1991); *City of Los Angeles v. Preferred Communications*, *supra*, 476 U.S. at 494-95. The Ninth Circuit's decision threatens to turn the franchise transfer process into a First Amendment-free zone, in which local franchising authorities can interfere with the protected speech of cable operators without being subjected to *any* First Amendment scrutiny.

IV. THE ISSUES RAISED IN THIS CASE ARE OF GENERAL AND NATIONWIDE SIGNIFICANCE.

The decision of the Ninth Circuit, if left in place, will have serious consequences for cable operators and consumers nationwide. Congress provided cable operators with a wide range of carefully delineated statutory protections against local governments' exercise of monopoly control over an essential input in cable operators' provision of service (namely, public rights-of-way). *See, e.g.*, H.R. Rep. No. 98-934, 98th Cong., 2d Sess. 19 (1984) (1984 Cable Act "defin[es] and limit[s] the authority that a franchising authority may exercise through the franchise process"). In addition, this Court has recognized that cable operators enjoy considerable protections under the First Amendment. *See* Section III, *supra*. Yet, as described in the preceding sections, the Ninth Circuit's decision effectively enables local franchising authorities to circumvent the constraints of the Communications Act and the First Amendment whenever a cable operator seeks approval for a transfer ownership.

The practical consequence of that decision is considerable. As a result of trends toward consolidation and regional clustering of cable systems, transfers of ownership of cable companies and individual cable systems occur with some frequency. In addition, various kinds of corporate reorganizations (including re-incorporations and restructurings) commonly require approval by local franchising authorities. Thus, many cable systems are involved in one or more events requiring franchising authority approval once every two or three years. And each time such an event takes place within the Ninth Circuit, the franchising authority will be encouraged and enabled by the court's decision to extract concessions that are at odds with the Communications Act and the First Amendment.

Moreover, the impact of the decision will extend well beyond the Ninth Circuit. Most cable systems in the United States are owned by multiple system owners like Charter, which sometimes own systems serving hundreds or even thousands of local communities. Thus, many of the transfers of ownership that take place – such as mergers of multiple system owners or "swaps" of cable systems to bring clusters under unified control – involve multiple systems across the nation. If some of the systems being transferred are in the Ninth Circuit, and, as the result of the decision below, those systems will be effectively forced to relinquish statutory and First Amendment rights in the transfer approval process, many of those transactions will be discouraged. Insofar as such transactions improve efficiency, cable subscribers across the country will be worse off.

Thus, this case presents questions of broad national significance. The decision below undermines the federal regulatory framework of Title VI and threatens the First Amendment rights of cable operators – not only in the Ninth Circuit but nationwide.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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